

Message Text

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DEP CDR ECOM FT MONMOUTH NJ

C O N F I D E N T I A L SECTION 1 OF 2 MADRID 5464

SECDEF FOR DSAA AND ISA

E.O. 11652: GDS

TAGS: MARR, MASS, SP

SUBJECT: TERRITORIAL COMMAND NET (TCN) FOR SPAIN

REF: (A) DIR IL ODCSLOG 231904Z JUNE 1977 (NOTAL);

(B) CDR USAILCOM 281759Z JUNE 1977 (NOTAL)

SUMMARY:

AS THE TCN PROJECT, AFTER OVER THREE YEARS AND WELL
OVER \$40 MILLION, APPROACHES COMPLETION, POTENTIALLY
UNPLEASANT AND DIFFICULT PROBLEMS LOOM IN ADJUDICATION
OF LARGE CONTRACTOR CLAIMS AND IN SPANISH RELUCTANCE TO
ACCEPT THE SYSTEM AND ITS FINAL COSTS. EITHER ASPECT OF
THE PROBLEM COULD FACT THE FALL MINISTERIAL MEETING OF
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THE US-SPANISH COUNCIL AND COULD FEED POLITICAL CRITICISM,
PARTICULARLY IN THE NEW PARLIAMENT, OF THE SECURITY
ASSISTANCE PROGRAM. DETAILS ARE BEING REPORTED BY
SEPTEL. WHAT FOLLOWS IS A BRIEF SUMMARY WITH
RECOMMENDATIONS. END SUMMARY.

1. THE TCN PROJECT, DESIGNED TO PROVIDE THE SPANISH

ARMY AND NAVY WITH A MUCH-NEEDED NATIONAL COMMUNICATIONS SYSTEM, WAS FIRST NEGOTIATED BY REPRESENTATIVES OF OUR TWO GOVERNMENTS IN 1971. A 1972 SERVICE-TO-SERVICE MEMORANDUM OF UNDERSTANDING AND DD FORM 1513 ESTABLISHED A FRAMEWORK, AND TWO YEARS LATER, IN 1974, TERMS OF PAYMENT WERE AGREED AND A FIXED-PRICE CONTRACT AWARDED TO A US BIDDER WHO OFFERED TO COMPLETE THE PROJECT AT LESS THAN HALF THE COST ESTIMATED BY US ARMY EXPERTS. THERE WERE DELAYS AND DISAGREEMENTS FROM THE START. SPANISH MILITARY AUTHORITIES CONSISTENTLY REFUSED TO AGREE WITH DECISIONS WHICH COULD INCREASE THE COST OF THE CONTRACT, AND THE US PROJECT MANAGER OFTEN PROCEEDED WITHOUT SPANISH AUTHORITY, AND WITHOUT RAISING THE MATTER FOR DECISION AT THE POLITICAL LEVEL. NOW, AS THE PROJECT NEARS COMPLETION, OVER \$6 MILLION IN CLAIMS HAVE ALREADY BEEN SUBMITTED BY THE CONTRACTOR; ADDITIONAL SUCH CLAIMS TOTALING \$9 MILLION ARE POSSIBLE; A US PROCUREMENT CONTRACTING OFFICER HAS RULED FAVORABLY ON AN EARLY CLAIM FOR \$1 1/4 MILLION, WHICH, FOLLOWING NORMAL PROCEDURE, WOULD NEXT BE PRESENTED THE GOS; AND THE TCN FIELD OFFICE ITSELF MAY REQUIRE \$1 MILLION GRANT AID ADDITIONAL TO WHAT SPANISH MILITARY AUTHORITIES HAVE BEEN LED TO EXPECT.

2. MEANWHILE, SPANISH MILITARY AUTHORITIES ARE REFUSING TO ACCEPT THE FIRST OF THE THREE TCN SUB-CONFIDENTIAL

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SYSTEMS, CREATING THE POSSIBILITY THAT DIFFERENCES REGARDING THE PROJECT MAY BE RAISED FOR CONSIDERATION AT THE LEVEL OF THE US-SPANISH COUNCIL (AS SUCCESSOR TO THE JOINT COMMITTEE ON DEFENSE MATTERS, TO WHICH DISPUTES WERE TO BE REFERRED, ACCORDING TO THE 1972 MOU). THE PRESENT COURSE, IF UNALTERED, SEEMS SURE TO BRING COLLISION WITH THE TOP LEVEL OF THE SPANISH GOVERNMENT, WHICH WILL ARGUE THAT WE ARE UNFAIRLY INFLECTING THE CONSEQUENCES OF WEAKNESSES IN OUR OWN CONTRACTING SYSTEM ON SPAIN.

3. MUCH OF THE US ARGUMENT RESTS ON THE LANGUAGE PRINTED ON THE BACK OF A 1972 DD FORM 1513 WHICH DID NOT CONTAIN COST FIGURES OR TERMS OF PAYMENT, FEATURES ADDED TWO YEARS LATER BY DIFFERENT OFFICIALS ON 1513 AMENDMENT FORMS WHICH APPARENTLY DID NOT CONTAIN THIS "SMALL PRINT." HOWEVER FORMALLY CORRECT THIS PROCEDURE MAY HAVE BEEN, OUR DEFENSE RELATIONSHIPS WITH SPAIN ARE OF SUCH IMPORTANCE THAT WE MAY WISH TO THINK TWICE BEFORE PRESSING A CASE ON SUCH GROUNDS IN THE PRESENT POLITICAL CONTEXT.

4. RECOMMENDATIONS: RATHER, THAT THERE BE:

(A) EARLY REVIEW OF THE POLICY IMPLICATIONS OF ALLOWING THE TCN PROJECT TO BECOME A SUBJECT OF SERIOUS CONTENTION WITH THE SPANISH GOVERNMENT AT THIS JUNCTURE, AND OF THE EXTENT TO WHICH AN INTERNAL US SOLUTION OF THE CLAIMS PRESENTED BY THE CONTRACTOR MAY BE POSSIBLE; SEPARATING OUT OF THOSE VALID CLAIMS CLEARLY ATTRIBUTABLE TO SPANISH ACTION OR INACTION FROM THOSE ATTRIBUTABLE TO WEAKNESSES IN US CONTRACTING PROCEDURES OR DEPT. OF THE ARMY ADMINISTRATION OF THE PROJECT.

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(B) A MORATORIUM ON PRESENTATION OF ANY TCN CLAIMS TO THE GOS OR APPROACHES TO THE POLITICAL LEVEL OF THE GOS UNTIL THIS REVIEW HAS BEEN ACCOMPLISHED AND UNTIL WE ARE IN A BETTER POSITION TO KNOW WHAT THE TOTAL IMPACT OF CLAIMS AND COUNTERCLAIMS MAY BE (THE TCN FIELD OFFICE COULD CONTINUE TO KEEP ITS DIRECT SPANISH MILITARY COUNTERPARTS INFORMED OF DEVELOPMENTS WITH RESPECT TO CLAIMS).

(C) SIMILARLY, AVOIDANCE OF ANY STEPS LEADING TO
DRAWING DOWN OF THE SPANISH GRANT ASSISTANCE ACCOUNT,
MAINTAINED BY THE SECURITY ASSISTANCE ACCOUNTING CENTER,
BEYOND THE AMOUNT ALLOCATED FOR THE TCN PROJECT,
UNTIL A POLICY REVIEW AND ANY NEGOTIATIONS WITH THE GOS
HAVE BEEN COMPLETED.

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(D) TO THE EXTENT WE ARE UNABLE TO DEAL "IN HOUSE"
WITH CONTRACTOR CLAIMS NOT DIRECTLY ATTRIBUTABLE TO
SPANISH PERFORMANCE, CONSIDERATION OF THE POSSIBILITY
OF OFFERING TO SEEK A DECISION BY ARBITRATION. STABLER

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